

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: CITY OF HAYESVILLE Keokuk County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2012-AQ-01 NO. 2012-SW-03
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TO: Chris Gammack, Mayor
City of Hayesville
PO Box 45
Hayesville, Iowa 52562

Amber Thompson, City Attorney
Stravers Law Firm
110 North Market Street
Oskaloosa, Iowa 52577-2827

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and the City of Hayesville for the purpose of resolving the air quality and solid waste disposal violations which occurred during the demolition, burning and disposal of a school building in Hayesville, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements: **Relating to legal requirements:**

Jim Kacer, Field Office #6
Iowa Department of Natural Resources
1023 West Madison
Washington, IA 52353
Phone : 319/653-2135

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone : 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 205B, Division of Air

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quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. On September 8, 2011, DNR Field Office 6 received a complaint alleging that the City of Hayesville had demolished an old school building and buried the building on site.

2. On September 13, 2011, Jim Kacer, DNR Field Office 6 environmental specialist, investigated the complaint. He visited the City Hall and no one was present, he obtained the names of the city clerk and mayor from a neighbor. The lot the old school building was on was located north of the City Hall. Mr. Kacer noted the lot was empty and grass covered. The school bell tower had been preserved and was located in front of City Hall. Mr. Kacer was able to collect a small piece of loose shingle from the bell tower. The laboratory sample result indicated that only a trace amount of asbestos was present in the single shingle sample, which did not equate to a regulated concentration of asbestos.

3. On September 22, 2011, Mr. Kacer spoke to Sherrie Casper, Hayesville City Clerk. Ms. Casper explained that the City owned the school building and in the spring of 2011, the City demolished the school building. Ms. Casper explained that prior to the demolition; the floor joists and similar material as well as other materials were salvaged by various groups. Ms. Casper stated that a person from the state historical society walked through the building and did not identify any asbestos containing material. However, the building was not thoroughly inspected by a certified asbestos inspector. Ms. Casper stated that the shell of the school building was demolished and buried on site.

4. On September 28, 2011, the DNR issued a Notice of Violation letter to the City of Hayesville for the violations discovered by Mr. Kacer. The violations included failure to conduct a thorough asbestos inspection, failure to submit a demolition notification, and improper solid waste disposal. The City was required to dispose of the school building demolition debris as asbestos containing waste material at a permitted landfill within 60 days of receipt of the letter. The letter informed the City that the matter was being referred for further enforcement.

5. On October 11, 2011, Mr. Kacer attended the city council meeting at the request of the City of Hayesville. The City had requested that Mr. Kacer come to the meeting to explain the regulations and discuss the Notice of Violation letter. During the meeting, Mr. Kacer learned that the building had been burned prior to it being

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buried. This was the first time that the DNR knew that the building had been burned and then buried.

6. On October 19, 2011, the City of Hayesville's attorney sent a letter to DNR. The letter requested an extension of the 60 day deadline for cleaning up the disposal site.

7. On October 28, 2011, the DNR issued a revised Notice of Violation letter to the City of Hayesville for the open burning violation that Mr. Kacer discovered during the city council meeting. Based on the fact that the debris was burned and then buried, the DNR determined that the burn debris could remain in place as long as the area was fenced off and an affidavit explanatory of title was filed with the Keokuk County Recorder.

8. On December 1, 2011, the Hayesville City Attorney submitted a copy of the affidavit explanatory of title that was filed with the Keokuk County Recorder. The letter stated that the other requirements of the letter were being completed by the City and the City Clerk would contact the DNR once the requirements had been completed.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). A school building owned by the City of Hayesville was demolished and burned. The above facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.133 provides for the Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), found at 40 CFR part 61, subpart M.

4. 40 CFR section 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to the commencement of demolition or renovation. The DNR has no evidence that an asbestos inspection was ever completed prior to the

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demolition of the school building. The above facts indicate a violation of this provision.

5. 40 CFR section 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation operations. The specific requirements for this notification are contained in the subsection. DNR has no record of receiving the required notification for the demolition of the school building. The above facts indicate a violation of this provision.

6. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

7. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The demolition debris from the school building was burned and buried on site rather than disposed of at a landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and the City of Hayesville agrees to do the following:

1. The City of Hayesville shall comply with 40 CFR 61.154 to maintain the demolition site; and
2. The City of Hayesville shall pay a penalty of \$4,475.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. Iowa Code section 455B.146A provides for more serious criminal sanctions for the air quality violations. 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$4,475.00

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penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Failure to follow the proper asbestos NESHAP regulations and solid waste disposal regulations by the improper open burning and disposal of the buildings has allowed the City of Hayesville to save time and money. The City of Hayesville was able to avoid the cost of an asbestos inspection and saved time by not notifying the DNR of the demolition. The estimated cost of an inspection and possible cost of asbestos abatement that City of Hayesville avoided is \$600.00. Additionally, the City of Hayesville was able to avoid landfill costs by burning the building rather than taking it to the landfill. It is estimated that the City of Hayesville saved at least \$1,375.00 in landfill fees and transportation costs. Therefore, \$1,975.00 is assessed for economic benefit.

Gravity of the Violation - Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to inspect for asbestos and notify prior to demolition has possibly caused asbestos fibers to be released into the air through the demolition and burning of the structures. These violations threaten the integrity of the regulatory program because compliance with the open burning, asbestos, and solid waste regulations is required of all persons in this state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. The open burning and improper solid waste disposal may adversely impact the health of the citizens in the area surrounding the burn site. \$1,500.00 is assessed for gravity of violation.

Culpability - The City of Hayesville has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Based on the above considerations, \$1,000.00 is assessed for this factor.

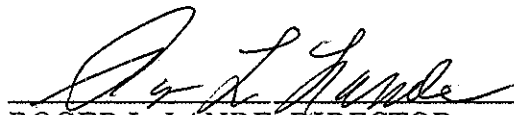
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of the City of Hayesville. For that reason the City of Hayesville waives the right to appeal this administrative order or any part thereof.

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VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 20th day of
January, 2012.



CITY of HAYESVILLE

Dated this 1/8 day of
_____, 2012.

Barb Stock (Con 10-6 Keokuk County); Kelli Book; Field Office 6; EPA; VI.C, VII.C 1,
and VII.C 4

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